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In The

Supreme Court of the United States

October Term, 1977

No. 77-650

LOUISE SPENCER,

Petitioner,

vs.

FLOYD SKELTON, IDAHO LIVESTOCK COMMISSION COMPANY, AND THE IDAHO FIRST NATIONAL BANK,

Respondents.

BRIEF OF RESPONDENTS FLOYD SKELTON AND IDAHO LIVESTOCK COMMISSION COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TERRY L. CRAPO
of
HOLDEN, HOLDEN, KIDWELL,
HAHN & CRAPO

P. O. Box 129
Idaho Falls, Idaho 83401

Attorneys for Respondents Floyd Skelton and Idaho Livestock Commission Company

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STATEMENT OF THE CASE

Petitioner's Statement of the Case misstates and omits reference to many significant factual matters. Respondents accordingly submit the following additional information concerning the case:

I. Background

This case was a civil action seeking specific performance of written settlement agreements entered into between

the petitioner and respondents in settlement of an earlier civil case. The primary case was tried on May 1, 1973, and the settlement was affected during the trial. The petitioner later disavowed the settlement agreements and the respondents filed this action for specific performance. The trial of the present case was held in two parts: (1) The plaintiffs' case in chief was presented on May 7, 1975, and the trial was then recessed to permit the petitioner to appear or present evidence through a deposition or affidavit; (2) The remainder of the trial was held on September 7, 1975. The record on appeal consists of three separate transcripts: (1) The clerk's transcript of both parts of the 1975 trial, hereinafter referred to as "Tr. —"; (2) The reporter's transcript of the May trial, hereinafter referred to as "May Tr. —"; and (3) The reporter's transcript of the September trial, hereinafter referred to as "Sept. Tr. —". Portions of the transcript referred to are included in the Appendix.

II. The Primary Case Disposition

Petitioner states that materials necessary to the trial of her orignial case on May 1, 1973, were not available to her at the time of trial and that she and her counsel were not able to proceed with trial or settlement discussions at that time. To the contrary, the Petitioner's counsel for the May 1, 1973, trial testified that he had spent approximately two and one-half (2½) years in preparation for the trial and had the necessary witnesses present and available for the trial:

> (Mr. Thatcher) There had been extensive preparation. We had been in the case approximately two and a half years, and I had spent a major part of my time, over two and a half years, on Mrs. Spencer's matters. On specific trial preparation, we did have a handwriting expert, a document examiner, from Washington, D. C. who was there available to testify, as Mrs. Spencer indicated. We had Harry LeMoyne, who is a competent expert in real estate appraising and with special reference to evaluation of livestock auction properties. . . . We did have a man . . . from the board which governs auctions in Idaho, livestock auctions. . . . We had John Parry, who is a Certified Public Accountant, who had done some preliminary work with us. We had him analyze facts. He was there in the courtroom also prepared to testify. . . . So I would say generally we'd put in a lot of preparation and we were ready for trial. (Sept. Tr. 67-68)

Petitioner advises the Court that the settlement of the case was achieved without offers or negotiations and that she was under the impression that she had to accept her attorneys' settlement proposals. These statements are clearly contradicted by the record. The settlement negotiations commenced on May 1, 1973, and continued late into that night. Several conference calls were held between the respective attorneys, and petitioner's attorneys conversed with her by telephone on several occassions and on at least two occasions late in the evening visited her in person to discuss the settlement negotiations (Sept. Tr. 99-100). Early the next morning, Petitioner and her attorneys went to the offices of the attorneys for the Respondent and were given a library conference room to use as the base of their operations. Negotiations continued throughout the morning and into the afternoon. During this interim the court was kept advised of the settlement discussions and the jury was held in recess (Sept. Tr. 101). A settlement was finally negotiated during the midafternon and agreed upon by all of the parties.

The trial court was orally advised of the settlement and the jury was dismissed late in the afternoon of May 2, 1973 (Sept. Tr. 101). Petitioner fully participated in all of these negotiations and was kept fully advised of all settlement offers. The final settlement actually exceeded the settlement figure she had authorized her attorneys to accept (Sept. Tr. 104-A).

Although the parties had orally agreed upon a settlement amount of $187,500.00 for full settlement of all claims against the Respondents, the preparation of the settlement agreement and covenants not to sue or proceed further involved further drafting and negotiation. Petitioner's claim against The Idaho First National Bank was not to be released, and so it was necessary that the settlement documents be carefully drafted to preserve her claim against the bank (Sept. Tr. 101-106). The settlement documents were redrafted several times, including changes requested by Petitioner's attorneys (Sept. Tr. 104-A).

On Monday, May 7, 1973, the settlement documents had been completed. The documents were carefully and thoroughly read by Mr. Gordon Thatcher, attorney for Petitioner, and by Petitioner herself. Mr. Thatcher and Petitioner then privately discussed the settlement documents and the settlement procedures (Sept. Tr. 113-114). Petitioner and her attorney then each signed all of the settlement documents and Petitioner acknowledged the papers before a Notary Public (Sept. Tr. 115). Petitioner was then taken to the Idaho Falls Airport to catch a Western Airlines flight returning to her home in Denver, Colorado (Sept. Tr. 115).

The settlement documents called for the payment of $30,000.00 as a down payment and this sum was paid on May 7, 1973, by two checks delivered to Petitioner's attorneys (May Tr. 52-54). The checks were deposited in the trust account of Petitioner's attorneys, Rigby & Thatcher, and held subject to her direction. Some of the funds were subsequently disbursed at the order of Petitioner. None of the funds have been returned to Respondents.

During her flight home to Denver, Petitioner wrote a letter to her attorneys, and posted it in Salt Lake City, Utah, on May 7, 1973 (Pl. Ex. R-1; Sept. Tr. 147-148). In her letter, Petitioner praised the work done by her attorneys in settling the lawsuit, stating in part:

> Your task of fighting Floyd is happily resolved. It was tough and you earned your pay and then some. Now you have the bank-executor. There is to be absolutely no flack on other minor issues in this case to disturb your concentration. I won't allow it-absolutely . . . You and Ray are my only *Idaho* attorneys. You'll always be paid on our agreements. And your job is to fight the bank-executor from now on—and only the bank-executor. Since you resolved the log-jam with Floyd so beautifully with such hard work it is only the bank now (Pl. Ex. R-1; Sept. Tr. 148).

Prior to leaving Rexburg, Idaho, in early May, 1973, Petitioner on several occasions told her attorneys and other parties how pleased she was with the settlement (Sept. Tr. 202).

One of the conditions in the settlement documents was a requirement that Petitioner obtain the approval of the settlement by her children, who claimed an interest in the estate. Petitioner's daughter Miriam resides with her in

Denver, Colorado. On May 18, 1973, Petitioner secured Miriam's signature on the settlement documents and then mailed the documents to her attorneys to file with the court when the other signatures were obtained (Sept. Tr. 137-140). At approximately the same time, Petitioner wrote two lengthy letters to her attorney Gordon Thatcher, confirming her approval of the May 1, 1973, settlement, authorizing the collection of the settlement proceeds from Floyd Skelton, and outlining her litigation plans against The Idaho First National Bank (Pl. Ex. R-3 and R-4; Sept. Tr. 155).

On July 28, 1973, Petitioner discharged the firm of Rigby & Thatcher as her attorneys and refused to perform the terms of the settlement agreement. Until that date, some three months after the settlement, there had been no disavowal of the settlement agreement on the part of Petitioner (Sept. Tr. 161-162).

The Respondents served notice of default upon Petitioner on September 7, 1973, and tendered payment of the balance of the settlement proceeds upon performance of the settlement agreements (Pl. Ex. 10 and 11; May Tr. 39). Petitioner refused to perform the settlement and disavowed it.

III. The Present Case

The present case involves only the issue of whether the settlement agreement should be specifically enforced against Petitioner. Petitioner's claims against the Estate of S. R. Spencer and The Idaho First National Bank are still pending in Idaho actions. Respondent's complaint in the present case was filed on December 6, 1973, and Petitioner appeared pro se and filed an Answer and Counterclaim on December 26, 1973. On November 7, 1974, Lloyd Webb, Esq., counsel for Petitioner in this proceeding, entered his appearance in the present case and filed an Amended Answer and Counterclaim (Tr. 81). Thereafter, Mr. Webb vigorously represented Petitioner's interests.

With the exception of Miriam Spencer, all of the Petitioner's children appeared in the present case, asked that the settlement be enforced according to its terms, and claimed an interest in the settlement proceeds (Tr. 180). The Idaho First National Bank also appeared and asked that the settlement be enforced and that settlement monies properly belonging to the Estate of S. R. Spencer, if any, be paid into the estate and administered as part of the estate (Tr. 103).

The trial court properly severed the claims against the settlement proceeds from the present case and tried only the issue of whether the settlement agreement should be enforced. After a number of delays requested by the Petitioner, the case was set for trial on May 7, 1975. Petitioner did not appear at the trial and requested a delay until her health would permit her to attend. Respondents offered evidence and the trial was then recessed until Petitioner could appear and testify. After additional delays, all of the parties (including the Petitioner) stipulated that Petitioner would not have to appear in person and could submit her testimony through an Affidavit, without cross-examination. The remainder of the trial was held on September 8, 1975, and Petitioner's affidavit was read into the record. The affidavit attacked the settlement on several grounds and rebuttal testimony was offered on each of these issues.

On January 21, 1976, the trial court entered its judgment finding that the settlement had been freely entered into by the Petitioner and ordering its specific enforcement (Pet. App. C, p. 4).

Petitioner appealed the judgment to the Idaho Supreme Court on two basic grounds: (1) That Petitioner's former attorneys should not have been permitted to testify in the matter because of the attorney-client privilege; and (2) That the evidence did not sustain the trial court's findings. On June 27, 1977, the Idaho Supreme Court affirmed the decision of the trial court and specifically found that the Petitioner had waived the attorney-client privilege as to the settlement negotiations by attacking the conduct of her attorneys and by herself testifying as to the privileged conversations with her attorneys during the negotiations. The Idaho court also found that the judgment of the trial court was supported by substantial, competent evidence (Pet. App. A, pp. 7, 10).

At no time during the appeal, or during the trial in the Idaho district court, did the Petitioner raise the issues of denial of a jury trial, denial of the right to counsel, or any of the other federal issues described in the Petition before this Court.

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REASONS FOR DENYING THE WRIT

I.

Procedural Matters

A. Failure to Comply With Rule 23

Petitioner has failed to comply with the provisions of Rule 23 (f) of the Rules of this Court in that Petitioner has failed to do any of the following: (1) Specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; (2) The method of raising them; and (3) The way in which they were passed upon by the court. The Petition does not show that any federal questions were timely or properly raised so as to give this Court jurisdiction to review the judgment on Writ of Certiorari.

B. Failure to Raise Federal Issues in State Courts

None of the federal questions raised in the Petition for a Writ of Certiorari was raised by the Petitioner in any of the state court proceedings below, nor were they passed upon by the state courts. The judgment, findings of fact and conclusions of law by the trial court (Pet. App. C, pp. 4-35) show that no federal questions were raised or decided by the trial court. The decision of the Idaho Supreme Court (Pet. App. A, pp. 4-10) shows that the only issues presented on appeal were: (1) Whether the trial court erred in admitting into evidence the testimony of the Petitioner's former attorneys; and (2) Whether there was substantial, competent evidence in the record to support the trial court's judgment. No federal questions were raised or decided in the Idaho appeal.

It is well established that this Court will not decide federal constitutional issues raised for the first time in this Court on the review of state court decisions. This Court has held that it is not vested with jurisdiction unless a federal question was raised *and* decided in the state court below. If the record before this Court does not show both of these matters, then appellate jurisdiction fails. *Tacon v. Arizona,* 410 U. S. 351 (1973); *Cardinale v. Louisiana,* 394 U. S 437 (1969); *Safeway Stores, Inc. v. Oklahoma Retail Grocers Assn., Inc.,* 360 U. S. 334 (1959). The federal issues not having been raised below nor decided by the Idaho courts, the requirements of 28 U. S. C., Sec. 1257 (3) have not been met, and this Court does not have jurisdiction to grant the Writ of Certiorari.

II.

Denial of Due Process

A. The Handling of the Litigation by the Idaho Courts

The Petitioner claims that she was denied due process in the trial below because: (1) She was denied the assistance of counsel during the trial; (2) She was not given the opportunity to appear personally; (3) She was not given the opportunity to confront witnesses; and (4) Her counsel was obliged to defend the case without adequate time to prepare the case. None of these issues was raised in either of the Idaho courts, nor has the Petitioner presented any portions of the record below to document any of these claims.

Actually, the record below shows that Petitioner was represented by counsel during each portion of the trial

below and that Petitioner personally agreed to the presentation of her testimony in the case by affidavit, rather than by personal appearance. Respondent's complaint was filed on December 6, 1973, and Petitioner appeared pro se on December 26, 1973. On November 7, 1974, Lloyd Webb, Esq., appeared on behalf of the Petitioner in the case below and thereafter represented her in all proceedings in the trial court and the appeal to the Idaho Supreme Court. The first portion of the trial was held on May 7, 1975, six months after the Petitioner obtained the services of counsel. At that proceeding, Petitioner's attorney suggested that the trial be deferred until a later date or until Petitioner's testimony could be presented in an alternative form:

> Mr. Webb: Your Honor, before the plaintiff proceeds we have prepared and would like to file at this time on behalf of Mrs. Spencer a motion supported by affidavit for a continuance of the trial *or alternatively for the reception of Mrs. Spencer's evidence by deposition* and I would like to present that matter to the court before the plaintiff begins, if I may. (May Tr. 7) (Emphasis added.)

The trial court granted the motion and ordered the Respondents to present their case in chief. The court then recessed the trial until September 8, 1975, to allow the Petitioner an opportunity to appear or present testimony through a deposition. The court suggested that the parties consider allowing the Petitioner to present her testimony through an affidavit (Tr. 197-201).

On May 30, 1975, the parties entered into a stipulation permitting the Petitioner to present evidence in the case through an affidavit and without cross-examination. A portion of the stipulation is as follows:

> The parties stipulate and agree that the testimony of the defendant, Louise Spencer, may be submitted by proper affidavit, to be filed with the Court within thirty (30) days of the date of the filing of this Stipulation with the Court. Each of the parties expressly waives and releases any right of cross-examination of said defendant, Louise Spencer, and agrees that said affidavit may be submitted to the Court and considered by the Court as the testimony of the defendant, Louise Spencer, in this matter.
>
> Following the filing of said affidavit, the Court may promptly set this cause for trial of the remaining issues. Each party may present rebuttal evidence and testimony as they see fit. In the event any other parties present rebuttal evidence or testimony, the defendant, Louise Spencer, waives the right to present any oral testimony by Louise Spencer in surrebuttal. (Tr. 205-206)

The stipulation was signed *individually* by Louise Spencer and by her attorney.

The record before the Court therefore shows that the Petitioner did have counsel during the trial and on appeal, that she was twice given the opportunity to appear personally, that she agreed by stipulation to present her testimony through affidavit without cross-examination, and that her counsel had six months to prepare prior to the first hearing and another four months prior to the second hearing. The record before the Court affirmatively shows that the handling of the case by the Idaho courts provided the Petitioner due process.

B. The Deprivation of Property Without Due Process

Petitioner is apparently trying to argue that the manner of administration of the Estate of S. R. Spencer by The Idaho First National Bank has deprived her of

property without due process. That matter is not an issue in the present case. The present case deals solely with the question of whether the settlement agreement between the Respondents and the Petitioner should be enforced. The trial court expressly reserved ruling on the question of which parties are entitled to receive the monies to be paid by Respondents under the settlement agreement. The parties, including Louise Spencer, had stipulated on April 30, 1975, that the division of the settlement proceeds was to be determined at a later date:

> That in the event the plaintiffs shall be successful upon the trial of this matter and the Court should award judgment to the plaintiffs as prayed for in their Complaint on file herein, then and in such event, all sums due and payable thereunder by the plaintiffs shall be paid to the Clerk of Court by the plaintiffs, said sum to be divided among the respective defendants pursuant to their claims as determined by the Order of the Court at a subsequent hearing.
>
> That the issue of the respective claims of the defendants to all or any of the proceeds to be paid to the Clerk of Court and the division of such monies shall not be decided by the Court at its trial of the matter on May 7, 1975, but shall be reserved until a subsequent evidentiary hearing to be promptly set by the Court, at which time the defendants may present and assert their respective claims to said monies. (Tr. 195)

The monies which were to be paid by Respondents in the settlement represented payment for claims and assets which were included in the Estate of S. R. Spencer. The proceeds were claimed by the Petitioner, by the administrator of the estate, and by the other heirs of the estate. Whether the Petitioner has been deprived of

those assets and the proceeds because of the conduct of the administrator and the heirs is an issue that was excluded from consideration of the court below by the stipulation of the Petitioner. That issue was not presented in the Idaho courts below and cannot therefore be raised in support of the Petition for a Writ of Certiorari.

III.

Equal Protection of Law

Petitioner again claims that she has been denied equal protection of the law because of the manner of the administration of the Estate of S. R. Spencer. She claims this has deprived her of effective representation in the courts. As discussed above, that issue was not raised below and was not decided below. By agreement of the parties that issue was reserved to a subsequent trial.

Petitioner also claims that she was denied "equal protection" because the settlement documents required her to obtain the consent of her children before final payment would be made. It should be noted that the requirement of children's consent was the result of a contractual arrangement freely entered into by the Petitioner and not an obligation imposed upon her by law. Accordingly, there has been no state action resulting in a denial of equal protection of law. It should also be noted that the Petitioner's children claimed an interest in the property which was disposed of in the settlement and it was therefore most appropriate that their consent to the settlement be obtained to avoid further litigation. The validity of the children's claims was expressly reserved

from the trial below and any questions concerning them is not a proper issue to raise in this proceeding.

IV.

The Right of Jury Trial

This Court has not yet decided the question of whether the 7th Amendment to the Constitution of the United States requires State courts to provide the right of jury trial. Petitioner invites the Court to determine that question in the context of this case by claiming the Idaho courts denied her that claimed right. The simple answer to this claim is that Petitioner never asked for a jury trial and the court never was presented with a request for a jury trial. Petitioner was represented by counsel for six months prior to the trial and at no time did counsel ever request a jury trial. The jury trial issue was never raised on the appeal to the Idaho Supreme Court.

The Idaho Supreme Court has held that the right to a civil trial by jury is waived by failure to demand a jury trial within ten days after service of the last pleading directed to an issue. *Meyer v. Whipple,* 94 Idaho 260, 486 P. 2d 271 (1971). This Court has also held that the failure to demand a trial by jury constitutes a waiver of the right to the jury trial, if any such right exists. *Duignan v. United States,* 274 U. S. 195 (1927).

V.

Right to Counsel

It has already been pointed out that the State of Idaho at no time denied Petitioner the right to counsel

in the present case. Petitioner has not referred this Court to any instances in which the trial court or the Idaho Supreme Court refused to hear counsel or restricted Petitioner's use of counsel. To the contrary, the record shows that from November 7, 1974, Petitioner was at all times represented by counsel.

Petitioner also attempts to argue that the rulings in the lower courts which permitted her former attorneys to testify as to matters discussed in the settlement negotiations somehow denied her the right to effective counsel. It is not clear how this evidentiary ruling has anything to do with the representation of Petitioner in the present case by counsel of her own choosing. However, the decision of the Idaho Supreme Court in the case below clearly explains why the trial court was correct when it ruled that the Petitioner had waived her attorney-client privilege when she testified concerning the conduct and statements of her attorneys during the settlement negotiations (Pet. App. A, pp. 1-10).

This Court has repeatedly ruled that state substantive law should be determined by the highest court of the state and that such a determination will not be reviewed unless a constitutional or federal issue is involved. *Hortonville Joint School District No. 1 v. Hortonville Education Association,* 426 U. S. 482 (1976); *Groppi v. Wisconsin,* 400 U. S. 505 (1971). There are no constitutional or federal issues involved in the determination of the waiver of the attorney-client privilege issue. Even if the issue were properly presented, this Court has held on the substantive issue that a client who enters upon a defense which involves what transpired between the client and her

attorney and who voluntarily testifies as to such matters, thereby waives her right to object to the attorney thereafter giving his account of the matter. *Hunt v. Blackburn,* 128 U. S. 464 (1888).

VI.

Abrogation of Contract

Petitioner argues that by judicially enforcing the settlement agreements the State of Idaho is abrogating her contract rights in violation of Article I, Section 10 of the Constitution of the United States. However, that provision of the Constitution is not applicable to the judicial enforcement of the terms of private contracts. This Court held in *Cross Lake Shooting and Fishing Club v. Louisiana,* 224 U. S. 632 (1912) that:

> This Clause (Art. I, Sec. 10), as its terms disclose, is not directed against all impairment of contract obligations, but only against such as results from a subsequent exertion of the legislative power of the state. It does not reach mere errors committed by a state court when passing upon the validity or effect of a contract under the laws in existence when it was made. (224 U. S. at 638)

CONCLUSION

The rules of this Court indicate that generally the Court will grant a Writ of Certiorari only when "a state court has decided a federal question of substance not theretofore determined by this court, or has decided it

in a way probably not in accord with applicable decisions of this court." (Rule 19 (a)). The record before the Court shows that no federal questions were presented to the trial court or the appellate court and that no federal questions were decided by them. Accordingly, the Petition for a Writ of Certiorari to the Supreme Court of the State of Idaho should be denied.

Dated this 5th day of December, 1977.

Respectfully submitted,

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO
By TERRY L. CRAPO

P. O. Box 129
Idaho Falls, Idaho 83401

Counsel for Respondents,
Floyd Skelton and Idaho
Livestock Commission Company

APPENDIX

This appendix contains portions of the reporters transcript cited in Respondent's brief.

Sept. Tr. 99-101

(Mr. Thatcher):

. . . We had several conference calls that night. By conference calls, I would get in touch with Mrs. Spencer on the motel telephone and we would discuss the details including the amounts of prospective settlement and other details. We'd get authorization to a point, and I'd get Mr. Rigby and Mr. Holden on the phone and we would discuss it. He would then discuss it with Mr. Skelton and he'd get back again. The course of these negotiations, to the best of my recollection, extended on to two or three in the morning. Now, after a time, and I've forgotten the exact time, I think it may have been even ten or ten-thirty or it may have been later, the switchboard ceased to operate at the Viking Motel, so on at least two occasions I went to the Viking Motel, knocked on Mrs. Spencer's door, and visited with her in the—I think it was the second floor, and it's on the balcony outside the door, about the course of the negotiations. So she was advised throughout. In our last discussion, we had not reached an agreement, we were not that far apart. We indicated that the trial was scheduled for the morning, that we had an early morning meeting scheduled at the Holden law office in Idaho Falls, that she should go there instead of to the courthouse because we were still going to try to settle the case before court reconvened at nine-thirty or ten, whatever the time is that the Court had scheduled. So we had a very late night that night. We had a very early morning the next morning. Not many hours in between. We went to Idaho Falls early, and we resumed negotiations. The negotiations then continued until the trial time, and, as I recall, we contacted the Court and asked for an extension of time. I think we

may have been quite optimistic then. I think we asked the Court to wait until ten o'clock or ten-thirty, something like that. We didn't complete the negotiations. Then they went on with further contacts of the Court and finally an agreement was reached somewhere in the range of three o'clock in the afternoon or three-thirty, thereabouts. At that time we came over to the Court and presented to Judge Burton that we had orally agreed on a settlement of the case, that there were numerous details to be worked out, but we all felt that the jury by then would be prejudiced one way or another. They'd been sitting all day while we were negotiating a settlement. It was agreed that the jury be dismissed and then we proceeded to put in writing the settlement.

Sept. Tr. 104-A-105

(Mr. Thatcher):

Then the bank, we couldn't move them at all, and there were some problems they expressed of getting people together and all the rest of it. So we agreed on the settlement. Then the question was of putting it together, and there had to be settlement documents drawn and, if I recall, the first draft of those were completed that afternoon, which would have been May 2, 1973. The first draft that came in said we were receiving this money from Mr. Skelton, but did not have the kind of language in it which, as a lawyer, I felt should be in it to indicate that it was a covenant and that all rights were reserved against Idaho First National Bank. So we objected to this and we had it changed. I noticed in Mrs. Spencer's affidavit she said she saw that and we didn't, which is not true. I mean we noticed that point and had it corrected. The actual drawing of those documents took several days before they were finally completed, with back and forth negotiations. We left the office in the afternoon or evening, and it could have been evening, of May 2nd, '73, the Holden law office, with the understanding that drafts would be made to arrive at the settlement agreement.

Other points of negotiation which were involved included whether the daughters would be required to sign. Mrs. Spencer was anxious that the daughters not have to sign another agreement. Mr. Holden and Mr. Kidwell, who I think was involved in it also, for Mr. Skelton indicated that they had to have that as part of the settlement. We, in all candor, had to tell Mrs. Spencer that we did not see how you could settle a lawsuit wtih the daughters as parties to the lawsuit without having the daughters a party to the settlement papers. We tried to get it otherwise. We knew that Mr. Holden would represent his client, and in all fairness he's going to have to require that the daughters be on it. So Mrs. Spencer knew at the time of the agreed settlement that the daughters had to be on the papers. . . .

Sept. Tr. 113-115

(Mr. Thatcher):

Q. Now, Mr. Thatcher, do you recall when the settlement papers were finally signed by the parties?

A. The settlement papers were finally signed on the following Monday, which would have been May 7th, as I recall.

Q. Where were they signed?

A. They were signed in the same library conference room which had been our base of operations in all the negotiations.

Q. And who was present at that time?

A. Mrs. Spencer, myself, Bill Holden of your office, and Dorothy Grimmett as a Notary Public from your office.

Q. (By Mr. Crapo) Were you given an opportunity to review the settlement documents, the two covenants?

A. Yes, and the final settlement papers that were signed had some variations, but were not basic-

ally different from papers we'd been working with for several days. I did read them carefully and thoroughly.

Q. Did Mrs. Spencer read them?

A. She read them also, and we discussed them.

Q. Do you know what period of time this took, the reading and discussing?

A. The reading and discussing at the actual signature was not a lengthly period of time. There had been a lot of discussions prior, but it was—they were read and discussed.

Q. Was this in the presence of Mr. Holden and Mrs. Grimmett, or were you left by yourself with Mrs. Spencer to discuss them?

A. Well, the actual signing was in the presence of Mr. Holden and Dorothy, but we had met privately prior on the papers.

Q. So you and Mrs. Spencer met privately to review the documents before she signed them?

A. Yes.

Q. (By Mr. Crapo) And did you, in fact, sign the documents on her behalf as her attorney?

A. I believe there's a place on there for the attorney to sign. As I recall, I did, yes.

Q. Did Mrs. Spencer sign in your presence?

A. Yes, she did.

Q. Did she sign in front of a Notary Public?

A. Yes.

Q. Was she sworn by the Notary Public before she signed?

A. She acknowledged the papers before the Notary Public, yes.

Q. What happened then?

A. Then I took Mrs. Spencer to the plane. She had a plane that was leaving very soon. I drove her out to the airport and put her on the plane.

Sept. Tr. 137-139

(Mr. Thatcher):

Q. When did she first know or when did you first advise her that the children's signatures were required?

A. Prior to going to Court on May the 2nd and having the jury dismissed. As we arrived at the settlement and other phases of it, the fact that the children would have to sign was discussed, and it, the fact that the children would have to sign was discussed, and it was quite a point of discussion, and it was agreed that it would have to be done, that hopefully we would have no problems, she would make the effort, and it just had to be faced, that's all.

Q. Now, subsequent to putting Mrs. Spencer on the plane, you said you discussed getting the signatures of the children on this document. Did you or Mrs. Spencer ever obtain any signatures of the children to these documents?

A. Yes, we received back in the mail from Mrs. Spencer three documents that had been—that is, I guess I can assume they were signed by Miriam, there was a notary, Colorado notary acknowledged the signature of her daughter, Miriam, on the two covenants and on a separate paper I'd prepared to help shore us up in our battle we thought we'd have with the bank on getting the funds released even though we had the children sign.

Q. (By Mr. Crapo) Who sent these three documents to you?

A. Louise Spencer.

Q. And when did this occur?

A. The documents were signed by Miriam on the 18th of May, 1973.

Q. Some eleven days after the original documents were signed?

A. Yes. . . .

Q. (By Mr. Webb) Did you receive any instructions from Mrs. Spencer as to whether or not these documents should be released to anyone else?

A. Oh, they were sent to me to submit to the Court.

Q. Were they submitted to the Court?

A. No, because we didn't obtain the other signatures.

Q. Did you ultimately receive some instructions from Mrs. Spencer not to submit any of the papers and not to implement the purported settlement?

A. I don't think so. I was fired as an attorney, but I don't think I received those instructions.

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(Mr. Thatcher):

Q. (By Mr. Crapo) Mr. Thatcher, did Mrs. Spencer ever disavow the settlement agreements to you?

A. She discharged me as an attorney, and there were some inferences of disavowing. I really can't recall her disavowing the settlement as such prior to my discharge.

Q. When were you discharged?

A. I believe it was July 28, 1973, or thereabouts.

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(Mr. Rigby):

A. She came into the office and I was busy in my office with the door open, and she talked to a couple of the secretaries that were there present at the reception desk, and as she talked to them she walked into my door and Gordon subsequently walked out of his door and so we all sort of grouped at the entrance to my office. And she was smiling and gay, and she had to—she said, I just couldn't leave without telling you how much I appreciate what you people have done for us, how pleased I am that it's settled as to the livestock auction company and she told the girls, she said, you ought to be proud of your employers, they did a beautiful job and I'm so happy it's settled with them and we're going to get that bank, and I have talked with several of my friends on the telephone and I got in my car and went to visit them, and she said, this is a good day after twelve years.